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PRYOR CASHMAN LLP

September 14, 2021

By ECF

MEMORANDUM ENDORSEMENT

The Honorable Gabriel W. Gorenstein
United States Magistrate Judge
Southern District of New York
500 Pearl Street, Courtroom 6B
New York, New York 10007-1312

Re: Marc Restellini v. The Wildenstein Plattner Institute, Inc.
20 Civ. 4388 (AT) (GWG)

Dear Judge Gorenstein:

Plaintiff-Counterclaim Defendant Marc Restellini (“Restellini”) and Defendant-Counterclaimant The Wildenstein Plattner Institute, Inc. (“WPI”), and Defendant Fonds Wildenstein Plattner Institute France (“Fonds,” and together with WPI, the “WPI Entities”) jointly request that the Court issue the accompanying Letter of Request, attached hereto as Exhibit A, pursuant to, and in conformity with, the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the “Hague Convention”), 28 U.S.C. § 1781.

The proposed Letter of Request seek the assistance of the judicial authorities of France in obtaining the testimony of several witnesses, each of whom has agreed to be deposed pursuant to the Federal Rules of Civil Procedure. As such and based on preliminary inquiries with the French authorities, the Parties expect that the French authorities will promptly approve the letter of request.

Each of the witnesses has knowledge of various facts relating to the claims and defenses of the Parties and the Parties jointly submit that a Hague Convention request is the appropriate mechanism by which to obtain their testimony. Specifically, “Article 1 of the Hague Evidence Convention provides that a judicial authority in one contracting state may forward a letter of request to the competent authority in another contracting state for the purpose of obtaining evidence.” *Skyline Steel, L.L.C. v. PilePro, LLC*, No. 13 Civ. 8171 (JMF), 2015 WL 13832108, at *1 (S.D.N.Y. Jan. 28, 2015); (internal quotation marks omitted) (citing 23 U.S.T. 2555); *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 482 U.S. 522, 535 (1987).

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The United States and France are both signatories to the Hague Convention and, accordingly, a letter of request is the means by which this Court can formally seek that a court in France “lend its judicial assistance in obtaining evidence or performing some other judicial act.” *Blagman v. Apple, Inc.*, No. 12 Civ. 5453 (ALC), JCF, 2014 WL 1285496, at *3 (S.D.N.Y. Mar. 31, 2014); *see, e.g., Villella v. Chem. & Mining Co. of Chile Inc.*, No. 15 Civ. 2106 (ER), 2018 WL 2958361, at *2 (S.D.N.Y. June 13, 2018) (“Application for a letter of request to take testimony pursuant to the Hague Convention is an appropriate mechanism for obtaining discovery of a non-party witness in a foreign country”).

Consistent with the Order of Reference entered in this case (ECF No. 17) and 28 U.S.C. § 636, a United States Magistrate Judge has the authority to issue a request under the Hague Convention. *See, e.g., Dyson, Inc. v. SharkNinja Operating LLC*, No. 14 Civ. 779, 2016 WL 5720702, at *1 (N.D. Ill. Sept. 30, 2016), *objections overruled*, 2017 WL 446042 (N.D. Ill. Feb. 2, 2017); *In re Letter Rogatory from Loc. Ct. of Ludwigsburg, Fed. Republic of Germany in Matter of Smith*, 154 F.R.D. 196, 200 (N.D. Ill. 1994).

For the foregoing reasons, and those set forth in the attached Letter of Request, the Parties jointly request that the Court grant this application and approve and sign the attached Letter of Request.

The Parties further request that, following the Court’s approval of the Letter of Request, the Clerk of the Court authenticate the Court’s signature under the seal of the Court (where indicated) and then return the Letter of Request to the undersigned counsel.

Counsel will then promptly cause the Letter of Request to be translated into French and, thereafter, transmitted to the appropriate judicial authorities, in conformity with Article 4 of the Hague Convention.

Home addresses of witnesses have been redacted in the attached Exhibit A. The final version to be sent to the French authorities will be unredacted.

There is one person that all Parties regard as a highly important witness who has not agreed to be deposed and who will need to be summoned by the French authorities to appear before a French judge who will execute the Parties’ Hague Convention request. Under applicable French procedure, the Parties will be required to write out in advance all the questions to be asked of this witness and identify in advance all of the documents about which the witness will be examined. As such, the Parties expect to ask the Court to issue a further Hague Convention request at a later date and after further discovery has occurred.

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The Parties thank the Court for its consideration of this joint request.

The Parties are available at the Court's convenience, should the Court wish to discuss this request by telephone.

Respectfully submitted,

MCKOOL SMITH P.C.

/s/

By: Daniel W. Levy
Eliza Beeney
Attorneys for Plaintiff-Counterclaim
Defendant Marc Restellini and Counterclaim
Defendant Institut Restellini SAS -
Documentation Centre

PRYOR CASHMAN LLP


/s/

By: William L. Charron
Daniel V. Derby
Attorneys for Defendant-Counterclaimant
Wildenstein Plattner Institute, Inc. and
Defendant Fonds Wildenstein Plattner
Institute France

Cc: All Counsel (by ECF)

The request is approved. Please mail (or have delivered) to the undersigned a paper copy of the Letter of Request. The Chambers address is 500 Pearl Street, New York, New York 10007. Please include a clear instruction as to the name and address of the attorney to whom the document should be returned.

So Ordered.



GABRIEL W. GORENSTEIN
United States Magistrate Judge
September 14, 2021